IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, STATE OF LOUISIANA, STATE OF OHIO, OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY, Plaintiffs, v. CHEMTRADE LOGISTICS (US), INC., CHEMTRADE REFINERY SERVICES INC., MARSULEX, INC., Defendants.	)	Civil Action No.

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"); the State of Louisiana ("Louisiana"), by and through its Attorney General, on behalf of the people of the State of Louisiana, and the Louisiana Department of Environmental Quality ("LDEQ"), by and through its Secretary; the State of Ohio ("Ohio"), on behalf of the Ohio Environmental Protection Agency ("Ohio EPA"), and the Oklahoma Department of Environmental Quality ("Oklahoma DEQ"), allege:

NATURE OF THE ACTION

1. This is a civil action brought against CHEMTRADE LOGISTICS (US), INC. ("Chemtrade Logistics"), CHEMTRADE REFINERY SERVICES INC. ("Chemtrade Refinery Services"), and MARSULEX, INC. ("Marsulex") pursuant to Sections 113(b) and 304(a) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(b) and 7604(a), the Louisiana Environmental Quality Act, LSA-R.S. 30:2001 et seq.; the Ohio Revised Code ("O.R.C.") § 3704.06; and the Oklahoma Environmental Quality Code, 27A Okla. Stat. §§ 2-1-1-1 et seq.. This Complaint seeks injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the CAA, 42 U.S.C. §§ 7470-92; the Nonattainment New Source Review ("Nonattainment NSR") provisions of the CAA, 42 U.S.C. §§ 7501- 7509a; the New Source Performance Standards ("NSPS") of the CAA, 42 U.S.C. § 7411; Title V of the CAA, 42 U.S.C. § 7661 *et seq.*; and the State Implementation Plans for the State of Louisiana, Ohio, and Oklahoma promulgated pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, which incorporate and/or implement the above-listed federal requirements.

2. This action is based upon violations that occurred and continue to occur at six sulfuric acid manufacturing facilities located in or near the following cities: Cairo, Ohio ("Cairo Facility"); Oregon, Ohio ("Oregon Facility"); Beaumont, Texas ("Beaumont Facility"); Shreveport, Louisiana ("Shreveport Facility"); Tulsa, Oklahoma ("Tulsa Facility"); and Riverton, Wyoming ("Riverton Facility"). The plants emit sulfur dioxide and sulfuric acid mist, both of which are regulated pollutants under the CAA, into the atmosphere as a result of plant operations.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to Sections 113(b) and 304(a) of the CAA, 42 U.S.C. §§ 7413(b) and 7604(a), and pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1367.

4. Venue is proper in this District pursuant to Sections 113(b) and 304(c) of the CAA, 42 U.S.C. §§ 7413(b) and 7604(c), and 28 U.S.C. §§ 1391(b), (c) and 1395(a), because some of the violations that constitute the basis of this Complaint occurred and are occurring in this District and two of the facilities at issue operate in this District. Each of the Defendants has consented to venue in this District.

NOTICES

5. U.S. EPA issued a Notice of Violation ("NOV") and a Finding of Violation ("FOV") to Chemtrade Logistics on December 7, 2007, numbered EPA-5-08-OH-01, alleging PSD, NSPS, and Title V violations at the Cairo Facility.

6. U.S. EPA issued the following NOVs and FOVs to Marsulex and its predecessor Coulton Chemical Company, LP ("Coulton"): EPA-5-98-OH-24 (September 30, 1998) (Oregon Facility); EPA-5-98-OH-31 (Oregon Facility) (September 30, 1998); EPA-5-98-OH-35 (Oregon Facility) (September 30, 1998); EPA-5-99-OH-23 (Cairo Facility) (June 18, 1999); EPA-5-99-OH-35 (Cairo Facility) (August 18, 1999); EPA-5-99-OH-36 (Oregon Facility) (August 18, 1999); EPA-5-01-OH-10 (January 25, 2001) (Cairo Facility). These NOVs and FOVs allege PSD, Nonattainment NSR, and NSPS violations, as well as violations of the state implementation plan ("SIP") for the State of Ohio, at the Cairo and Oregon Facilities.

7. The United States has provided notice of the commencement of this action to the State of Texas as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b). Co-Plaintiffs, the State of Louisiana, the State of Ohio, and the Oklahoma Department of Environmental Quality, have notice of this action. The Riverton Facility is located on tribal land and is regulated under the Clean Air Act by U.S. EPA, which also has notice of this action.

8. The 30-day period established in 42 U.S.C. § 7413 between issuance of the Notices of Violation to Chemtrade Logistics and Marsulex and the commencement of this civil action has elapsed.

DEFENDANTS

9. Defendant Chemtrade Logistics is a Delaware corporation doing business in Ohio. From approximately July 2001 to the present, Chemtrade Logistics has owned and operated the Cairo Facility, located at 7680 Ottawa Road, Cairo, Allen County, Ohio.

10. Defendant Chemtrade Refinery Services is a Delaware corporation doing business in Texas, Louisiana, Oklahoma, and Wyoming. It owns and operates the Beaumont, Shreveport, Tulsa, and Riverton Facilities.

11. Defendant Marsulex is a Canadian corporation doing business in Ohio. From approximately September 1996 to July 2001, Marsulex owned and operated the Cairo Facility. From approximately September 1996 to the present, Marsulex has owned and operated the Oregon Facility, located at 1400 Otter Creek Road, Oregon, Lucas County, Ohio.

12. Chemtrade Logistics, Chemtrade Refinery Services, and Marsulex each are a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

STATUTORY BACKGROUND

13. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1).

I. NATIONAL AMBIENT AIR QUALITY STANDARDS

14. Section 108(a) of the CAA, 42 U.S.C. § 7408(a), requires the Administrator of U.S. EPA to promulgate a list of each air pollutant, emissions of which may reasonably be anticipated to endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. Pursuant to Section 108(a), U.S. EPA has identified, inter alia, sulfur dioxide as such a pollutant. 40 C.F.R. §§ 50.4 and 50.5.

15. Section 109 of the CAA, 42 U.S.C. § 7409, requires the Administrator of U.S. EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS") for those air pollutants for which air quality criteria have been issued pursuant to Section 108 of the CAA, 42 U.S.C. § 7408. The primary NAAQS are to be adequate to protect the public health with an adequate margin of safety, and the secondary NAAQS are to be adequate to protect the public welfare from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air. Pursuant to Section 109 of the CAA, U.S. EPA has promulgated primary and secondary NAAQS for sulfur dioxide. 40 C.F.R. §§ 50.4, 50.5.

16. Under Section 107(d) of the CAA, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to

insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is "unclassifiable."

A. State Implementation Plans

17. To achieve the objectives of the NAAQS and the CAA, Section 110 of the CAA, 42 U.S.C. § 7410, requires each State to adopt and submit to U.S. EPA for approval a plan that provides for the attainment and maintenance of the NAAQS in each air quality control region with each state. This plan is known as a State Implementation Plan ("SIP").

18. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, the States of Louisiana, Ohio, and Oklahoma have adopted and submitted to U.S. EPA for approval various rules for the attainment and maintenance of the NAAQS. After such provisions are approved by U.S. EPA, these provisions constitute the state's "applicable implementation plan," within the meaning of Section 113(b) and 302(q) of the CAA, 42 U.S.C. §§ 7413(b) and 7602(q), and are considered State Implementation Plan ("SIP") Rules.

B. Prevention of Significant Deterioration ("PSD") Requirements

1. PSD Program in General

19. Part C of Title I of the CAA, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of

such a decision and after public participation in the decision making process. These provisions are referred to herein as the "PSD program."

20. The core of the PSD program is that "[n]o major emitting facility . . . may be constructed in any area" unless various requirements are met. Section 165(a) of the CAA, 42 U.S.C. § 7475(a). These requirements include obtaining a permit with emission limits, demonstrating that emissions will not contribute to a NAAQS violation, and applying "best available control technology" ("BACT") to control emissions. Id.

21. Section 169(1) of the CAA, 42 U.S.C. § 7479(1), designates sulfuric acid plants which emit or have the potential to emit one hundred tons per year or more of any pollutant to be a "major emitting facility."

2. PSD Regulations Applicable in Louisiana, Ohio, Oklahoma, and Texas

22. U.S. EPA promulgated regulations designed to implement the PSD program. These regulations are found at 40 C.F.R. § 52.21 and are referred to as the "PSD regulations." The Riverton Facility, which is located on tribal land and regulated by U.S. EPA, is directly subject to the federal PSD regulations.

23. Section 161 of the CAA, 42 U.S.C. § 7471, requires that each state implementation plan contain a PSD program. A state or regional air authority may comply with Section 161 by being delegated by U.S. EPA with the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations approved by U.S. EPA as part of its SIP, which must be at least as stringent as the requirements set forth at 40 C.F.R. § 51.166.

24. The States of Louisiana, Ohio, Oklahoma, and Texas each have either delegated or approved PSD programs. These states are authorized to issue and enforce PSD permits. The Louisiana Environmental Quality Act, LAC 33:Part III.509.I.1, and its implementing regulations; the Oklahoma Environmental Quality Code and Oklahoma Administrative Code, 27A Okla. Sta. § 2-5-112 and OAC 252:100-8-3(a)(3); the Ohio Revised Code and Ohio Administrative Code, 3745-31-13; and the corollary Texas statute and regulations require that any person who constructs or modifies a major stationary source must first obtain a permit. In all respects relevant to this Complaint, the PSD regulations of Louisiana, Ohio, Oklahoma, and Texas that are applicable to this action closely mirror the federal PSD regulations codified at 40 C.F.R. § 52.21.

3. Requirements of the Applicable PSD Regulations

25. Under the PSD regulations applicable to the allegations in this Complaint, "[n]o stationary source or modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements." 40 C.F.R. § 52.21(a)(1). The requirements of paragraphs (j) through (r) "apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the Act that it would emit." 50 C.F.R. § 52.21(a)(2).

26. "Major modification" is defined as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 C.F.R. § 52.21(b)(2)(i).

27. For sulfur dioxide, an emissions increase is "significant" if the net increase or potential to emit is equal to or greater than 40 tons per year. 40 C.F.R. § 52.21(b)(23)(i).

28. "Net emissions increase" is defined as "[a]ny increase in actual emissions from a particular physical change or change in method of operation" and any other emissions increase or decrease at the source that is contemporaneous and creditable. 40 C.F.R. § 52.21(b)(3)(i).

29. "Actual emissions" is defined as follows: "In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation." 40 C.F.R. § 52.21(b)(21)(i)-(ii). In addition, "[f]or any emissions unit . . . which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date." 40 C.F.R. § 52.21(b)(21)(iv).

30. If a new major stationary source or major modification triggers the requirements of the PSD program, the source or modification must install and operate best available control technology ("BACT"), as that term is defined at 40 C.F.R. § 52.21(b)(12) and 42 U.S.C. § 7479(3), for each pollutant subject to regulation under the CAA that it would have the potential to emit in significant amounts. 40 C.F.R. § 52.21(j).

31. If a new major stationary source or major modification triggers the requirements of the PSD program, the owner or operator must demonstrate that the construction or modification, taken together with other increases or decreases of air emissions, will not violate applicable air quality standards. 40 C.F.R. § 52.21(k).

32. If a new major stationary source or major modification triggers the requirements of the PSD program, the application for a PSD permit must be accompanied by an analysis of ambient air quality in the area. 40 C.F.R. § 52.21(m).

33. If a new major stationary source or major modification triggers the requirements of the PSD program, the owner or operator must submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21. 40 C.F.R. § 52.21(n).

34. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21 who constructs or operates a source not in accordance with a PSD permit application or commences construction without applying for and receiving approval thereunder is subject to an enforcement action. 40 C.F.R. § 52.21(r)(1).

C. Nonattainment New Source Review ("NSR")

1. Nonattainment NSR Program in General

35. Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, sets forth provisions relating to what are commonly referred to as "New Source Review" requirements applicable to nonattainment areas ("Nonattainment NSR"). The Nonattainment NSR program is intended, inter alia, to reduce emissions of air pollutants in areas that have not attained NAAQS.

36. Part D directs states to include in their SIPs requirements to provide for reasonable progress towards attainment of the NAAQS in nonattainment areas. Section § 172(c)(5) of the CAA, 42 U.S.C. § 7502(c)(5), provides that these SIPs shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with Section 173 of the CAA, 42 U.S.C. § 7503, in order to facilitate "reasonable further progress" towards attainment of the NAAQS.

37. Section 173 of the CAA, 42 U.S.C. § 7503, requires that in order to obtain such a permit the source must, among other things: (a) obtain federally enforceable emission offsets such that total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for the permit; (b) comply with the lowest achievable emission rate ("LAER") as defined in Section 171(3) of the CAA, 42 U.S.C. § 7501(3); and (c) analyze alternative sites, sizes, production processes, and environmental control techniques for the proposed source and demonstrate that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

38. Pursuant to Sections 172 and 173 of the CAA, 42 U.S.C. §§ 7502, 7503, U.S. EPA has promulgated regulations regarding SIP provisions for new or modified sources in nonattainment areas, which are codified, inter alia, at 40 C.F.R. §§ 51.160-51.166. 40 C.F.R. § 51.165 requires all state implementation plans to include a preconstruction review permit program.

39. As set forth in 40 C.F.R. § 52.24, no major stationary source may be constructed or modified in any nonattainment area as designated in 40 C.F.R. Part 81, Subpart C to which any SIP applies, if the emissions from such source will cause or contribute to concentrations of any pollutant for which a NAAQS is exceeded in such area, unless, as of the time of application for a permit for such construction, the state's implementation plan meets the requirements of Part D.

40. A state may comply with Sections 172 and 173 of the CAA by having its own Non-attainment NSR regulations approved as part of its SIP by U.S. EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.165.

2. Nonattainment NSR Rules Applicable in Ohio

41. In October of 1980, U.S. EPA conditionally approved Ohio's Nonattainment NSR SIP Rules. 45 Fed. Reg. 72119, 72122 (Oct. 31, 1980). These Nonattainment NSR SIP Rules were promulgated pursuant, inter alia, to the Nonattainment NSR requirements of Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515. These SIP Rules were codified in the Ohio Administrative Code ("OAC") at Chapter 3745-31-01 through 3745-31-08. See 40 C.F.R. § 52.1870(c)(83)(1996). On September 8, 1993, U.S. EPA gave limited approval of revisions to Ohio's Nonattainment NSR SIP Rules. 58 Fed. Reg. 47211 (Sept. 8, 1993); see 40 C.F.R. § 52.1870(c)(83)(1996). On April 22, 1996, U.S. EPA gave conditional approval to further revisions of Ohio's Nonattainment NSR SIP Rules, including SIP Rules codified at OAC Chapter 3745-31-09 through -10 and 3745-31-21 through -27. 61 Fed. Reg. 17576-77, 17669-75 (April 22, 1996).

42. Under the Nonattainment NSR SIP Rules that are applicable in this matter, no person may install a new source of air pollutants or modify an existing air contaminant source without first obtaining a permit to install from the Ohio Environmental Protection Agency. OAC 3745-31-02(A). Ohio Administrative Code Rule 3745-31-05(A) requires the Ohio EPA to "issue a permit to install . . . on the basis of the information appearing in the application [for the permit]. . . ."

43. Under the Nonattainment NSR SIP Rules that are applicable in this matter, a major source may construct a major modification in a nonattainment area only if the following conditions are met: (i) the modified source meets an emission limit defined as the "Lowest Achievable Emission Rate" ("LAER"); (ii) the owner or operator secures sufficient emissions reductions (offsets) from existing sources in the same area as the proposed modification such that there will be reasonable progress toward attainment of the applicable NAAQS; (iii) the owner or operator demonstrates that all major stationary sources it owns and operates in the same state as the proposed modification are in full compliance with emission limitations under the CAA; and (iv) the emissions offsets will produce a positive net air quality benefit in the affected area.

44. Pursuant to 40 C.F.R. § 52.23, any person who fails to comply with a permit condition issued pursuant to approved or promulgated regulations for the review of new stationary sources is deemed to be in violation of a requirement of a state implementation plan and is subject to an enforcement action under Section 113(b) of the CAA, 42 U.S.C. § 7413(b). Pursuant to Section 113(b)(1) of the CAA, 42 U.S.C. § 7413(b)(1), the violation of any requirement or provision of an applicable implementation plan is a violation of the CAA.

II. NEW SOURCE PERFORMANCE STANDARDS

45. Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires U.S. EPA to publish and periodically revise a list of categories of stationary sources including those categories that, in U.S. EPA's judgment, cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

46. Once a category is included on the list, Section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), requires U.S. EPA to promulgate a federal standard of performance for new

sources within the category, also known as a New Source Performance Standard ("NSPS"). Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the NSPS applicable to such source.

47. "New source" is defined as any stationary source, the construction or modification of which is commenced after the publication of the NSPS regulations or proposed NSPS regulations applicable to such sources. 42 U.S.C. § 7411(a)(2). "Stationary source" is defined as a building, structure, facility, or installation which emits or may emit any air pollutant. 42 U.S.C. § 7411(a)(3).

48. Pursuant to Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), U.S. EPA has identified sulfuric acid plants as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare.

49. Pursuant to Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), U.S. EPA has promulgated regulations that contain general provisions applicable to all NSPS sources. 40 C.F.R. Part 60, Subpart A, §§ 60.1- 60.19 ("Subpart A"). U.S. EPA also has promulgated specific New Source Performance Standards for sulfuric acid plants at 40 C.F.R. Part 60, Subpart H, §§ 60.100-60.109 ("Subpart H').

A. <u>Subpart A</u>

50. The provisions of 40 C.F.R. Part 60 "apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is

commenced after the publication [in Part 60] of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility." 40 C.F.R. § 60.1.

51. "Affected facility" is defined as "any apparatus to which a standard is applicable." 40 C.F.R. § 60.2.

52. "Modification" is defined as "any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted." 40 C.F.R. § 60.2. The regulations further state that any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of Section 111 of the CAA, 42 U.S.C. § 7411. 40 C.F.R. § 60.14(a).

53. An "existing facility" is defined as "any apparatus of the type for which a standard is promulgated in this part, and the construction or modification of which was commenced before the date of proposal of that standard." 40 C.F.R. § 60.2.

54. Upon modification, an "existing facility" becomes an "affected facility" for which the applicable NSPS must be satisfied. 40 C.F.R. § 60.14.

B. <u>Subpart H</u>

55. The "affected facility" to which the NSPS for sulfuric acid plants applies is defined as a "sulfuric acid production unit" for which construction or modification is commenced after August 17, 1971. 40 C.F.R. § 60.80. A "sulfuric acid production unit" is defined as "any facility

producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge." Id.

56. The owner or operator of a sulfuric acid production unit subject to Subpart H may not discharge into the atmosphere from the affected facility any gases which contain sulfur dioxide in excess of 2 kg per metric ton of acid produced (4.0 lb. SO_2 per ton of acid produced), the production being expressed as 100 percent sulfuric acid. 40 C.F.R. § 60.82.

57. The owner or operator of a sulfuric acid production unit subject to Subpart H may not discharge into the atmosphere from the affected facility any gases which contain acid mist, expressed as sulfuric acid, in excess of 0.075 kg per metric ton of acid produced (0.15 lb sulfuric acid per ton of acid produced), the production being expressed as 100 percent sulfuric acid. 40 C.F.R. § 60.83.

58. The owner or operator of a sulfuric acid production unit subject to Subpart H must install, calibrate, maintain, and operate a continuous monitoring system for measuring SO_2 emissions. 40 C.F.R. § 60.84.

III. TITLE V

59. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources." The purpose of Title V is to ensure that all "applicable requirements" that a source is subject to under the CAA, including PSD, Nonattainment NSR, and NSPS requirements are collected in one permit.

60. "Major source" is defined as, among other things, any source which directly emits or has the potential to emit 100 tons or more per year of any regulated air pollutant. 42 U.S.C. § 7661(2); 40 C.F.R. § 70.2. Sulfur dioxide is a regulated air pollutant. 40 C.F.R. § 70.2.

61. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), U.S. EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a Title V permit program to be administered by any state or local air pollution control agency. 57 Fed. Reg. 32250 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

62. The States of Louisiana, Ohio, Oklahoma, and Texas each have a U.S. EPA-approved Title V program. They are authorized to issue and enforce Title V permits. In all respects relevant to this Complaint, the Title V regulations of Louisiana, Ohio, Oklahoma, and Texas that are applicable to this action closely mirror the federal Title V regulations codified at 40 C.F.R. Part 70. Because the Riverton Facility is located on tribal lands, U.S. EPA administers and enforces the Title V program for the Riverton Facility.

63. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), the implementing regulations at 40 C.F.R. § 70.1(b), and the Louisiana, Ohio, Oklahoma, and Texas Title V permit programs and regulations make it unlawful for any person to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V.

64. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), the implementing regulations at 40 C.F.R. § 70.6(a), and the Louisiana, Ohio, Oklahoma, and Texas Title V permit programs and regulations require that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with "applicable requirements" of the CAA and the requirements of the relevant SIP. "Applicable requirements"

is defined to include any relevant PSD, Nonattainment NSR, and NSPS requirements. 40 C.F.R. § 70.2.

65. Section 503(d) of the CAA, 42 U.S.C. § 7661b(d), the implementing regulations at 40 C.F.R. § 70.5(a), and the Louisiana, Ohio, Oklahoma, and Texas Title V permit programs and regulations require any owner or operator of a source subject to Title V permitting requirements to submit a timely and complete permit application. Among other things, the permit application must contain: (i) information sufficient to determine all applicable air pollution control requirements (including any requirement to meet the applicable control technology requirements under the PSD and Nonattainment NSR programs and to comply with the applicable New Source Performance Standards), 40 C.F.R. § 70.5(c)(4); (ii) information that may be necessary to determine the applicability of other applicable requirements of the CAA, 40 C.F.R. § 70.5(c)(5); (iii) a compliance plan for all applicable requirements for which the source is not in compliance, 40 C.F.R. § 70.5(c)(8); and (iv) a certification of compliance with all applicable requirements by a responsible official. 40 C.F.R. § 70.5(d)(9).

66. Under 40 C.F.R. § 70.5(b) and the Louisiana, Ohio, Oklahoma, and Texas Title V operating permit programs and regulations, any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application must, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

IV. ENFORCEMENT PROVISIONS

A. United States

67. Sections 113(a)(1) and (3) of the CAA, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the CAA whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any other requirement or prohibition of, *inter alia*: (1) the Prevention of Significant Deterioration requirements of Section 165(a) of the CAA, 42 U.S.C. § 7475(a); (2) the Nonattainment New Source Review requirements of Sections 172 and 173 of the CAA, 42 U.S.C. §§ 7502 - 7503; (3) the New Source Performance Standards in Section 111 of the CAA, 42 U.S.C. § 7411; (4) Title V of the CAA, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or (5) a SIP or any permit issued thereunder.

68. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction and/or for a civil penalties. Civil penalties of up to $25,000 per day for each violation may be sought for violations prior to January 30, 1997; up to $27,500 per day may be sought for violations between January 30, 1997, and March 15, 2004; and up to $32,500 per day may be sought for violations occurring on and after March 15, 2004. 40 C.F.R. Part 19; 69 Fed. Reg. 7126 (Feb. 13, 2004).

B. Louisiana

69. Pursuant to the Louisiana Environmental Quality Act, LSA-R.S. 30:2001, et seq., in particular R.S. 30:2025(G), Louisiana, through the Department of Environmental Quality, is authorized to enforce the Louisiana Environmental Quality Act and institute an action for injunctive relief and civil penalties.

C. Ohio

70. Pursuant to the Ohio Revised Code, Ohio, on behalf of the Ohio Environmental Protection Agency, is authorized to enforce the Ohio Clean Air Act codified at Ohio Revised Code Chapter 3704, and to institute an action for injunctive relief and civil penalties.

D. Oklahoma

71. Pursuant to the Oklahoma Environmental Quality Code, Oklahoma, through the Oklahoma Department of Environmental Quality, is authorized to enforce the Oklahoma Environmental Quality Code and to institute an action for injunctive relief and civil penalties.

GENERAL ALLEGATIONS

72. At all relevant times, the six facilities that are the subject of this Complaint produced sulfuric acid through the "contact" process: liquid sulfur or spent sulfuric acid is processed through a series of reactions to ultimately create sulfuric acid. The six facilities emit sulfur dioxide and sulfuric acid mist.

73. In 1993, Coulton Chemical Company, LP ("Coulton") became the owner and operator of the Cairo and Oregon Facilities. Coulton owned and operated the Cairo and Oregon Facilities until approximately September 30, 1996.

74. On September 30, 1996, Coulton sold the Cairo and Oregon Facilities to Marsulex in an Asset Purchase Agreement. In that transaction, Marsulex assumed all of the liabilities with respect to environmental permits for the Cairo and Oregon Facilities. Marsulex owned and operated the Cairo Facility until July or August of 2001. Marsulex continues to own and operate the Oregon Facility.

75. In July or August 2001, Marsulex sold the Cairo Facility to Chemtrade Logistics through an Amended and Restated Share and Debt Purchase Agreement. In that transaction, Chemtrade Logistics assumed all of the liabilities with respect to the Cairo Facility. Chemtrade Logistics continues to own and operate the Cairo Facility.

76. In approximately August 2005, Chemtrade Refinery Services became the owner and operator of the Beaumont, Shreveport, Tulsa, and Riverton ("BSTR") Facilities. At that time, Chemtrade Refinery Services assumed all of the liabilities with respect to the BSTR Facilities. Chemtrade Refinery Services continues to own and operate the BSTR Facilities.

77. At all times relevant to this civil action, the Cairo and Oregon Facilities and at least some of the BSTR Facilities were each a "major emitting facility" and a "major stationary source" for sulfur dioxide, within the meaning of the CAA, the PSD and Nonattainment NSR regulations, and the corollary state SIPs. At all times relevant to this civil action, each of the six Facilities was a "stationary source" within the meaning of the CAA and the NSPS. At all times relevant to this civil action, the Cairo and Oregon Facilities and at least some of the BSTR Facilities were a "major source" within the meaning of Title V of the CAA and the states' Title V permit program.

78. U.S. EPA has conducted investigations of the Cairo and Oregon Facilities. These investigations included site inspections, a review of permitting history and emissions data, and an analysis of other relevant information obtained from Coulton, Marsulex, and Chemtrade Logistics concerning the construction and operation of the Cairo and Oregon Facilities. U.S. EPA also reviewed relevant information concerning the BSTR Facilities. The United States and Ohio, with respect to the Cairo and Oregon Facilities; the United States and Louisiana, with

respect to the Shreveport Facility; and the United States and the Oklahoma Department of Environmental Quality, with respect to the Tulsa Facility, allege the following based on the results of U.S. EPA's investigations and based upon information and belief.

FIRST CLAIM FOR RELIEF: CAIRO FACILITY
MARSULEX (direct and successor liability)
PSD: 42 U.S.C. § 7475(a); 40 C.F.R. § 52.21; Corollary Ohio SIP Provisions

79. Paragraphs 1 - 78 are realleged and incorporated herein by reference.

80. At various times starting in 1996 and continuing through 1998, Coulton and Marsulex commenced construction of a major modification, as defined in the CAA and the Ohio SIP, at the Cairo Facility. The modification at the Cairo Facility included one or more physical changes or changes in the method of operation, including but not limited to retubing a boiler in what is referred to as the A Plant; replacing catalyst beds; repacking absorption and drying towers; replacing a demister pad and related equipment in the absorption and drying towers; installing a booster fan in what is referred to as Plant B; installing a booster fan in the oleum system; repacking the oleum towers; replacing the economizer; and replacing the interpass heat exchanger.

81. This modification resulted in a significant net emissions increase of sulfur dioxide, that is, in an increase of more than 40 tons per year, at the Cairo Facility.

82. Coulton and Marsulex did not to apply for, obtain, or operate pursuant to a PSD permit for the modification. Marsulex operated the Cairo Facility during and after the modification.

83. By failing to apply for, obtain, and operate pursuant to a PSD permit, Coulton and Marsulex failed to: (i) undergo a proper BACT determination in connection with this major

modification; (ii) install and operate BACT for the control of sulfur dioxide; (iii) demonstrate that the emissions increases from the modification would not cause or contribute to violations of air quality standards; (iv) provide for review and public comment on the air quality impacts of the modification; and (v) otherwise comply with the requirements of the PSD program and the Ohio SIP.

84. Marsulex's modification to and operation of the Cairo Facility without a PSD permit constituted a violation of Section 165(a) of the CAA (42 U.S.C. § 7475(a)), the implementing regulations at 40 C.F.R. § 52.21, and the Ohio SIP (which incorporated the federal program during the entire period of Marsulex' ownership), O.R.C. § 3704.05(G) and Ohio Adm. Code 374531-13.

85. Marsulex also is liable as a successor to Coulton for Coulton's failures to comply with the requirements of the PSD program.

86. As provided in Section 113(b) of the CAA, (42 U.S.C. § 7413(b), and Section 167 of the CAA (42 U.S.C. § 7477), the violations set forth above subject Marsulex to civil penalties of up to $25,000 per day for each violation prior to January 31, 1997, up to $27,500 per day for each violation between January 30, 1997, and March 14, 2004, and up to $32,500 for each violation on and after March 15, 2004. Pursuant to O.R.C. § 3704.06(C), the violations set forth above subject Marsulex to civil penalties of up to $25,000 per day of each violation.

SECOND CLAIM FOR RELIEF: CAIRO FACILITY
CHEMTRADE LOGISTICS (direct and successor liability)
PSD: 42 U.S.C. § 7475(a); 40 C.F.R. § 52.21; Corollary Ohio SIP Provisions

87. Paragraphs 1 - 86 are realleged and incorporated herein.

88. Since approximately July 2001, Chemtrade Logistics has owned and operated the Cairo Facility without having, seeking, or operating under a PSD permit covering the major modification described in Paragraph 80.

89. By failing to apply for, obtain, and operate pursuant to a PSD permit, Chemtrade Logistics failed to: (i) undergo a proper BACT determination in connection with this major modification; (ii) install and operate BACT for the control of sulfur dioxide; (iii) demonstrate that the emissions increases from the modification would not cause or contribute to violations of air quality standards; (iv) provide for review and public comment on the air quality impacts of the modification; and (v) otherwise comply with the requirements of the PSD program and the Ohio SIP.

90. Chemtrade Logistics also is liable as a successor to Marsulex for Marsulex's failures to comply with the requirements of the PSD program.

91. Chemtrade Logistics's operation of the Cairo Facility without a PSD permit constitutes a continuing violation of Section 165(a) of the CAA (42 U.S.C. § 7475(a)), the implementing regulations at 40 C.F.R. § 52.21, and the Ohio SIP, O.R.C. § 3704.05(G) and Ohio Adm. Code 374531-13. Unless restrained by this Court, these violations will continue.

92. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Section 167 of the CAA, 42 U.S.C. § 7477, the violations set forth above subject Chemtrade Logistics to injunctive relief and civil penalties of up to $27,500 per day for each violation between January 30, 1997, and March 14, 2004, and up to $32,500 per day for each violation on and after March 15, 2004. Pursuant to O.R.C. § 3704.06(B) and (C), the violations set forth above subject

Chemtrade Logistics to injunctive relief and civil penalties of up to $25,000 per day of each violation.

THIRD CLAIM FOR RELIEF: CAIRO FACILITY
MARSULEX (direct and successor liability)
NSPS: 42 U.S.C. § 7411; 40 C.F.R. Part 60, Subparts A and H

93. Paragraphs 1 - 92 are realleged and incorporated herein.

94. Coulton and Defendant Marsulex each were an "owner or operator," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of a "sulfuric acid production unit" within the meaning of 40 C.F.R. §§ 60.80(a), at the Cairo Facility.

95. At various times commencing in approximately January of 1996, Coulton and Marsulex undertook a "modification" of an "existing facility" as those terms are defined in the NSPS, 40 C.F.R. §§ 60.2, 60.14, at the sulfuric acid production unit at the Cairo Facility. The modification included one or more physical changes or changes in the method of operation of the sulfuric acid production units, including but not limited to the changes described with more particularity in Paragraph 80. The modification increased the acid production capacity of the Cairo Facility and the emission rates of sulfur dioxide and sulfuric acid mist.

96. As a result of the modification, the sulfuric acid production unit at the Cairo Facility became an "affected facility" under Subparts A and H of the NSPS, and became subject to the NSPS, including the provisions of Subparts A and H.

97. Coulton and Marsulex failed to install, calibrate, maintain and operate a continuous emission monitoring system for the measurement of sulfur dioxide, in violation of 40 C.F.R. § 60.84, at the sulfuric acid production unit at the Cairo Facility.

98. Coulton and Marsulex failed to comply with the sulfur dioxide emission limit and the sulfuric acid mist limit in the NSPS which were applicable to the sulfuric acid production unit at the Cairo Facility after the modification, in violation of 40 C.F.R. §§ 60.82 and 60.83.

99. Marsulex is liable directly and as a successor to Coulton for failures to comply with the requirements of Subparts A and H of the NSPS regulations.

100. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the violations set forth above subject Marsulex to civil penalties of up to $25,000 per day for each violation prior to January 31, 1997, up to $27,500 per day for each violation between January 30, 1997, and March 14, 2004, and up to $32,500 for each violation on and after March 15, 2004. Pursuant to O.R.C. § 3704.06(C), the violations set forth above subject Marsulex to civil penalties of up to $25,000 per day of each violation.

FOURTH CLAIM FOR RELIEF: CAIRO FACILITY
CHEMTRADE LOGISTICS (direct and successor liability)
NSPS: 42 U.S.C. § 7411; 40 C.F.R. Part 60, Subparts A and H

101. Paragraphs 1 - 100 are realleged and incorporated herein.

102. At the time that Chemtrade Logistics assumed ownership of the Cairo Facility, the sulfuric acid production unit located therein was an "affected facility" under Subparts A and H of the NSPS, and was subject to the NSPS, including the provisions of Subparts A and H.

103. Chemtrade Logistics has failed and continues to fail to install, calibrate, maintain and operate a continuous emission monitoring system for the measurement of sulfur dioxide, in violation of 40 C.F.R. § 60.84.

104. Chemtrade Logistics has failed and continues to fail to comply with the sulfur dioxide emission limit and the sulfuric acid mist limit in the NSPS which are applicable to the sulfuric acid production unit at the Cairo Facility, in violation of 40 C.F.R. §§ 60.82 and 60.83.

105. Chemtrade Logistics also is liable as a successor to Marsulex for Marsulex's failures to comply with the requirements of Subparts A and H of the NSPS regulations.

106. Unless restrained by this Court, these violations will continue.

107. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the violations set forth above subject Chemtrade Logistics to injunctive relief and civil penalties of up to $27,500 per day for each violation between January 30, 1997, and March 14, 2004, and up to $32,500 per day for each violation on and after March 15, 2004. Pursuant to O.R.C. § 3704.06(B) and (C), the violations set forth above subject Chemtrade Logistics to injunctive relief and civil penalties of up to $25,000 per day of each violation.

FIFTH CLAIM FOR RELIEF: CAIRO FACILITY
CHEMTRADE LOGISTICS (direct and successor liability)
Title V: 42 U.S.C. § 7661a(a); 7661c(a); 40 C.F.R. §§ 70.5(a), (c); 70.6(a), (c);
Corollary Ohio Title V Provisions

108. Paragraphs 1 - 107 are realleged and incorporated herein.

109. As set forth above, Chemtrade Logistics' predecessors, Coulton and Marsulex, undertook activities constituting a major modification of the Cairo Facility under the PSD regulations and constituting a modification of an existing facility under NSPS. As a result, these activities triggered the requirements, *inter alia,* to obtain a PSD permit establishing emissions limitations that meet BACT, to operate in compliance with BACT, and to comply with the

NSPS, including Subparts A and H thereof. Chemtrade Logistics, directly as the owner and operator of the Cairo Facility and as a successor to Marsulex, failed to satisfy these requirements.

110. Chemtrade Logistics' predecessor, Marsulex, failed to submit a complete application for a Title V operating permit for the Cairo Facility that included enforceable BACT emission limits, identified all applicable requirements (including the requirement to meet BACT pursuant to PSD and to comply with NSPS), accurately certified compliance with such requirements, and contained a compliance plan for all applicable requirements for which the Cairo Facility was not in compliance (including the requirement to meet BACT pursuant to PSD and to comply with NSPS), in violation of Section 503(c) of the CAA, 42 U.S.C. § 7611b(c), 40 C.F.R. §§ 70.5(a) and (c), and the corollary provisions of Ohio's Title V program.

111. Upon assuming ownership, Chemtrade Logistics failed to supplement and/or correct the previously-submitted Title V application in order to: include enforceable BACT emission limits; identify all applicable requirements (including the requirement to meet BACT pursuant to PSD and to comply with NSPS); accurately certify compliance with such requirements; and include a compliance plan for all applicable requirements for which the Facility was not in compliance (including the requirement to meet BACT pursuant to PSD and to comply with NSPS). Chemtrade Logistics's failure to supplement violated 40 C.F.R. § 70.5(b) and the corollary provision of Ohio's Title V program, codified at O.R.C. § 3704.036 and Ohio Adm.Code 3745-15-05, Ohio Adm.Code Chapter 3745-31, and Ohio Adm.Code Chapter 3745-77.

112. Since the time of its ownership, Chemtrade Logistics has operated the Facility and continues to operate the Facility without having a valid Title V operating permit that either

requires compliance with BACT and NSPS or contains a compliance plan for coming into compliance with BACT and NSPS, in violation of Sections 502(a) and 504(a) of the CAA, 42 U.S.C. §§ 7661a(a), 7661c(a), 40 C.F.R. §§ 70.6(a), (c), and the corollary provisions of Ohio's Title V program, codified at O.R.C. § 3704.036 and Ohio Adm.Code 3745-15-05, Ohio Adm.Code Chapter 3745-31, and Ohio Adm.Code Chapter 3745-77.

113. Unless restrained by this Court, these violations will continue.

114. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the violations set forth above subject Chemtrade Logistics to injunctive relief and civil penalties of up to $27,500 per day for each violation between January 30, 1997, and March 14, 2004, and up to $32,500 per day for each violation on and after March 15, 2004. Pursuant to O.R.C. § 3704.06(B) and (C), the violations set forth above subject Chemtrade Logistics to injunctive relief and civil penalties of up to $25,000 per day of each violation.

SIXTH CLAIM FOR RELIEF: OREGON FACILITY
MARSULEX (direct and successor liability)
Nonattainment NSR: 42 U.S.C. § 7503(a); 40 C.F.R. § 52.24;
Corollary Ohio SIP Provisions

115. Paragraphs 1 - 114 are realleged and incorporated herein by reference.

116. The Oregon Facility is located in an area that was designated as "nonattainment" for sulfur dioxide for all relevant periods in this Complaint.

117. At various times starting in 1994 and continuing through 1997, Coulton and Marsulex commenced construction of a major modification, as defined in the CAA and the Ohio SIP, at the Oregon Facility. The modification at the Oregon Facility included one or more physical changes or changes in the method of operation, including but not limited to replacing

absorption tower packing with low-pressure drop packing; replacing steam nozzles on main turbines to increase the horsepower on the main blower; installing dry fans to increase gas flow throughput; upgrading transformer capacity to increase the power load from the dry fans; installing an additional cooling tower; installing a new acid cooler; installing additional catalyst; and enriching oxygen.

118. This modification resulted in a significant net emissions increase of sulfur dioxide, that is, in an increase of more than 40 tons per year, at the Oregon Facility.

119. Coulton and Marsulex did not to apply for, obtain, or operate pursuant to a Nonattainment NSR permit for the modifications. Marsulex operated the Oregon Facility during and after the modification.

120. By failing to apply for, obtain, and operate pursuant to a Nonattainment NSR permit, Coulton and Marsulex failed to: (i) undergo a proper LAER determination in connection with the major modification; (ii) install and operate LAER for the control of sulfur dioxide; (iii) secure emission reductions (offsets) from existing sources in the same area as the Oregon Facility such that there would be reasonable progress toward attainment of the applicable NAAQS; and (iv) otherwise comply with the requirements of the Nonattainment NSR program and the Ohio SIP.

121. Marsulex is liable directly and as a successor to Coulton for failures to comply with the requirements of the Nonattainment NSR program.

122. As provided in Section 113(b) of the CAA (42 U.S.C. § 7413(b)), the violations set forth above subject Marsulex to injunctive relief and civil penalties of up to $25,000 per day for each violation prior to January 31, 1997, up to $27,500 per day for each violation between

January 30, 1997, and March 14, 2004, and up to $32,500 for each violation on and after March 15, 2004. Pursuant to O.R.C. § 3704.06(B) and (C), the violations set forth above subject Marsulex to injunctive relief and civil penalties of up to $25,000 per day of each violation.

SEVENTH CLAIM FOR RELIEF: OREGON FACILITY
MARSULEX (direct and successor liability)
NSPS: 42 U.S.C. § 7411; 40 C.F.R. Part 60, Subparts A and H

123. Paragraphs 1 - 122 are realleged and incorporated herein.

124. Coulton and Defendant Marsulex each were an "owner or operator," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of two "sulfuric acid production units," within the meaning of 40 C.F.R. §§ 60.80(a), at the Oregon Facility. One sulfuric acid production unit at the Oregon Facility is identified as Plant A and the other is identified as Plant B.

125. The Plant A was constructed prior to August 17, 1971, and thus was an "existing" facility pursuant to the NSPS. The Plant B was constructed after August 17, 1971, and thus was an "affected" facility subject to 40 C.F.R. Part 60, Subparts A and H from the time of its construction in the 1970s until the present.

126. At various times commencing in approximately mid-1994, Coulton and Marsulex undertook a "modification" as that term is defined in the NSPS, 40 C.F.R. §§ 60.2, at the A and B Plants at the Oregon Facility. The modification included one or more physical changes or changes in the method of operation of the A and B Plants, including but not limited to the changes described with more particularity in Paragraph 117. The modifications increased the acid production capacity of the Oregon Facility and the emission rates of sulfur dioxide and sulfuric acid mist.

127. As a result of the modification, Plant A became an "affected facility" under Subparts A and H of the NSPS, and became subject to the NSPS, including the provisions of Subparts A and H. To the extent that the Plant B is not found to have been an "affected facility" prior to the modification, it became an "affected facility" as a result of the modification.

128. Until 2004, Coulton and Marsulex both failed to install, calibrate, maintain and operate a continuous emission monitoring system for the measurement of sulfur dioxide, in violation of 40 C.F.R. § 60.84, at the A and B Plants at the Oregon Facility.

129. Until 2004, Coulton and Marsulex both failed to comply with the sulfur dioxide emission limit and the sulfuric acid mist limit in the NSPS which were applicable to the A and B Plants, in violation of 40 C.F.R. §§ 60.82 and 60.83.

130. Marsulex is liable directly and as a successor to Coulton for failures to comply with the requirements of Subparts A and H of the NSPS regulations.

131. In approximately 2004, Marsulex agreed to subject the A and B Plants to the requirements of the NSPS and the Oregon Facility's operating permit now includes NSPS compliance requirements.

132. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the violations set forth above subject Marsulex to civil penalties of up to $25,000 per day for each violation prior to January 31, 1997, up to $27,500 per day for each violation between January 30, 1997, and March 14, 2004, and up to $32,500 for each violation on and after March 15, 2004. Pursuant to O.R.C. § 3704.06(C), the violations set forth above subject Marsulex to civil penalties of up to $25,000 per day of each violation.

EIGHTH CLAIM FOR RELIEF: OREGON FACILITY
MARSULEX (direct and successor liability)
Title V: 42 U.S.C. § 7661a(a); 7661c(a); 40 C.F.R. §§ 70.5(a), (c); 70.6(a), (c);
Corollary Ohio Title V Provisions

133. Paragraphs 1 - 132 are realleged and incorporated herein.

134. As set forth above, the Plant B was an "affected facility" from the time of its construction in the 1970s to the present. In addition, Marsulex and its predecessor, Coulton, undertook activities constituting a major modification of the A and B Plants at the Oregon Facility under the Nonattainment NSR regulations and constituting a modification of an existing facility under NSPS. As a result, these activities triggered the requirements, *inter alia,* to obtain a Nonattainment NSR permit establishing emissions limitations that meet LAER, to operate in compliance with LAER, to obtain emissions offsets, and to comply with NSPS, including Subparts A and H thereof. Marsulex, directly as the owner and operator of the Oregon Facility and as a successor to Coulton, failed to satisfy these requirements, except that, in approximately 2004, Marsulex did agree to subject the A and B Plants to NSPS requirements.

135. Marsulex failed to timely submit a complete application for a Title V operating permit for the Oregon Facility that included enforceable LAER emission limits, identified all applicable requirements (including the requirement to meet LAER pursuant to Nonattainment NSR and to comply with NSPS), accurately certified compliance with such requirements, and contained a compliance plan for all applicable requirements for which the Facility was not in compliance (including the requirement to meet LAER pursuant to Nonattainment NSR and to comply with NSPS), in violation of Section 503(c) of the CAA, 42 U.S.C. § 7611b(c), 40 C.F.R. §§ 70.5(a) and (c), and the corollary provisions of Ohio's Title V program, codified at O.R.C.

§ 3704.036 and Ohio Adm.Code 3745-15-05, Ohio Adm.Code Chapter 3745-31, and Ohio Adm.Code Chapter 3745-77.

136. Since the time of its ownership, Marsulex has operated the Oregon Facility and continues to operate the Oregon Facility without having a valid Title V operating permit that requires compliance with LAER or contains a compliance plan for coming into compliance with LAER. In addition, prior to 2004, Marsulex operated the Oregon Facility without a Title V permit that required compliance with the NSPS. These actions are in violation of Sections 502(a) and 504(a) of the CAA, 42 U.S.C. §§ 7661a(a), 7661c(a), 40 C.F.R. §§ 70.6(a), (c), and the corollary provisions of Ohio's Title V program, codified at O.R.C. § 3704.036 and Ohio Adm.Code 3745-15-05, Ohio Adm.Code Chapter 3745-31, and Ohio Adm.Code Chapter 3745-77.

137. Unless restrained by this Court, the failure to have a permit that requires compliance with LAER will continue.

138. As provided in Section 113(b) of the CAA (42 U.S.C. § 7413(b)), the violations set forth above subject Marsulex to injunctive relief and civil penalties of up to $25,000 per day for each violation prior to January 31, 1997, up to $27,500 per day for each violation between January 30, 1997, and March 14, 2004, and up to $32,500 per day for each violation on and after March 15, 2004. Pursuant to O.R.C. § 3704.06(B) and (C), the violations set forth above subject Marsulex to injunctive relief and civil penalties of up to $25,000 per day of each violation.

NINTH CLAIM FOR RELIEF: BSTR FACILITIES
CHEMTRADE REFINERY SERVICES (direct and successor liability)
PSD: 42 U.S.C. § 7475(a); 40 C.F.R. § 52.21;
Corollary Louisiana, Oklahoma, and Texas SIP Provisions

139. Paragraphs 1 - 138 are realleged and incorporated herein by reference.

140. Upon information and belief, at various times up to the present, Chemtrade Refinery Services and/or its predecessors have undertaken major modifications to one or more of the Beaumont, Shreveport, Tulsa, and Riverton ("BSTR") Facilities that have resulted in a significant net emissions increase of sulfur dioxide, that is, in an increase of more than 40 tons per year, at one or more of these Facilities.

141. Neither Chemtrade Refinery Services nor its predecessors applied for, obtained, or operated pursuant to a PSD permit for the modifications.

142. By failing to apply for, obtain, and operate pursuant to a PSD permit, Chemtrade Refinery Services and/or its predecessors failed to: (i) undergo a proper BACT determination in connection with each major modification; (ii) install and operate BACT for the control of sulfur dioxide; (iii) demonstrate that the emissions increases from the modifications would not cause or contribute to violations of air quality standards; (iv) provide for review and public comment on the air quality impacts of the modification; and (v) otherwise comply with the requirements of the PSD program and the Ohio SIP.

143. Chemtrade Refinery Services is liable directly and as a successor for the failure by prior owners to comply with the requirements of the PSD program.

144. Each instance in which Chemtrade Refinery Service modified and operated any BSTR Facility without a PSD permit constitutes a violation of Section 165(a) of the CAA (42

U.S.C. § 7475(a)), the implementing regulations at 40 C.F.R. § 52.21, and the applicable SIPs where the Facility is located.

145. Unless restrained by the Court, these violations will continue.

146. As provided in Section 113(b) of the CAA (42 U.S.C. § 7413(b)), and Section 167 of the CAA (42 U.S.C. § 7477), the violations set forth above subject Chemtrade Refinery Services to injunctive relief and civil penalties of up to $25,000 per day for each violation prior to January 31, 1997, up to $27,500 per day for each violation between January 30, 1997, and March 14, 2004, and up to $32,500 for each violation on and after March 15, 2004. These violations also subject Chemtrade Refinery Services to injunctive relief and civil penalties under the Louisiana Environmental Quality Act and the Oklahoma Environmental Quality Code.

TENTH CLAIM FOR RELIEF: BSTR FACILITIES
CHEMTRADE REFINERY SERVICES (direct and successor liability)
NSPS: 42 U.S.C. § 7411; 40 C.F.R. Part 60, Subparts A and H

147. Paragraphs 1 - 146 are realleged and incorporated herein.

148. Chemtrade Refinery Services and its predecessors each were an "owner or operator," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of "sulfuric acid production units" within the meaning of 40 C.F.R. §§ 60.80(a), at the BSTR Facilities. The Beaumont, Shreveport, and Tulsa Facilities each have one sulfuric acid production unit; the Riverton Facility has two.

149. Upon information and belief, at various times up to the present, Chemtrade Refinery Services and/or its predecessors have undertaken major "modifications" to one or more of the sulfuric acid production units at the BSTR Facilities and increased the acid production capacity

and the emission rates of sulfur dioxide and sulfuric acid mist from the modified sulfuric acid production units.

150. As a result of the modifications described in the preceding Paragraph, each modified sulfuric acid production unit at one or more of the BSTR Facilities became an "affected facility" under Subparts A and H of the NSPS, and became subject to the NSPS, including the provisions of Subparts A and H.

151. Chemtrade Refinery Services failed to install, calibrate, maintain and operate a continuous emission monitoring system for the measurement of sulfur dioxide, in violation of 40 C.F.R. § 60.84, at one or more of the sulfuric acid production units that were modified as described in Paragraph 149.

152. After each modification of a sulfuric acid production unit referred to in Paragraph 149, Chemtrade Refinery Services failed to comply with the NSPS sulfur dioxide emission limit and the sulfuric acid mist limit applicable to the modified sulfuric acid production unit, in violation of 40 C.F.R. §§ 60.82 and 60.83.

153. Chemtrade Refinery Services also is liable as a successor for its predecessors' failures to comply with the requirements of Subparts A and H of the NSPS regulations.

154. Each instance in which Chemtrade Refinery Services failed to comply with any NSPS requirements described in this claim constitutes a violation of the NSPS regulations and the CAA.

155. As provided in Section 113(b) of the CAA (42 U.S.C. § 7413(b)), the violations set forth above subject Chemtrade Refinery Services to injunctive relief and civil penalties of up to $25,000 per day for each violation prior to January 31, 1997, up to $27,500 per day for each

violation between January 30, 1997, and March 14, 2004, and up to $32,500 for each violation on and after March 15, 2004. These violations also subject Chemtrade Refinery Services to injunctive relief and civil penalties under the Louisiana Environmental Quality Act and the Oklahoma Environmental Quality Code.

ELEVENTH CLAIM FOR RELIEF: BSTR FACILITIES
CHEMTRADE REFINERY SERVICES (direct and successor liability)
Title V: 42 U.S.C. § 7661a(a); 7661c(a); 40 C.F.R. §§ 70.5(a), (c); 70.6(a), (c);
Corollary Louisiana, Oklahoma, and Texas Title V Provisions

156. Paragraphs 1 - 155 are realleged and incorporated herein.

157. As set forth above, Chemtrade Refinery Services and/or its predecessor, undertook activities constituting a major modification of the one or more of the BSTR Facilities under the PSD regulations and constituting a modification of one or more of the sulfuric acid production units at the BSTR Facilities under the NSPS. As a result, these activities triggered the requirements, *inter alia,* to obtain a PSD permit establishing emissions limitations that meet BACT, to operate in compliance with BACT, and to comply with NSPS, including Subparts A and H thereof.

158. One or more of Chemtrade Refinery Services' predecessors failed to submit a complete application for a Title V operating permit for one or more of the BSTR Facilities that included enforceable BACT emission limits, identified all applicable requirements (including the requirement to meet BACT pursuant to PSD and to comply with NSPS), accurately certified compliance with such requirements, and contained a compliance plan for all applicable requirements for which the applicable Facility was not in compliance (including the requirement to meet BACT pursuant to PSD and to comply with NSPS), in violation of Section 503(c) of the

CAA, 42 U.S.C. § 7611b(c), 40 C.F.R. §§ 70.5(a) and (c), and the corollary provisions of Louisiana's and Ohio's Title V program.

159. Upon assuming ownership, Chemtrade Refinery Services failed to supplement and/or correct previously-submitted Title V applications for one or more of the BSTR Facilities in order to: include enforceable BACT emission limits; identify all applicable requirements (including the requirement to meet BACT pursuant to PSD and to comply with NSPS); accurately certify compliance with such requirements; and include a compliance plan for all applicable requirements for which the applicable Facility was not in compliance (including the requirement to meet BACT pursuant to PSD and to comply with NSPS). Chemtrade Refinery Service's failure to supplement violated 40 C.F.R. § 70.5(b) and the corollary provision of Louisiana's and Oklahoma's Title V program.

160. Since the time of its ownership, Chemtrade Refinery Services has operated one or more of the BSTR Facilities and continues to operate one or more of the BSTR Facilities without having a valid Title V operating permit that requires compliance with BACT and NSPS or contains a compliance plan for coming into compliance with BACT and NSPS, in violation of Sections 502(a) and 504(a) of the CAA, 42 U.S.C. §§ 7661a(a), 7661c(a), 40 C.F.R. §§ 70.6(a), (c), and the corollary provisions of Louisiana's and Oklahoma's Title V program.

161. Unless restrained by this Court, these violations will continue.

162. As provided in Section 113(b) of the CAA (42 U.S.C. § 7413(b)), the violations set forth above subject Chemtrade Refinery Services to injunctive relief and civil penalties of up to $27,500 per day for each violation between January 30, 1997, and March 14, 2004, and up to $32,500 per day for each violation on and after March 15, 2004. These violations also subject

Chemtrade Refinery Services to injunctive relief and civil penalties under the Louisiana Environmental Quality Act and the Oklahoma Environmental Quality Code.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations set forth above, the United States, the State of Louisiana, the State of Ohio, and the Oklahoma Department of Environmental Quality request that this Court:

1. Permanently enjoin Chemtrade Logistics, Chemtrade Refinery Services, and Marsulex from operating the Cairo, BSTR, and Oregon Facilities, respectively, including the construction of future modifications, except in accordance with the Clean Air Act and the applicable SIPs;

2. Require Chemtrade Logistics and Chemtrade Refinery Services to remedy their liability for violations at the Cairo and BSTR Facilities by, among other things, requiring Chemtrade Logistics and Chemtrade Refinery Services, respectively, to install and operate the Best Available Control Technology at the Cairo and BSTR Facilities for sulfur dioxide;

3. Require Marsulex to remedy its liability for violations at the Oregon Facility by, among other things, requiring Marsulex to install and operate the Lowest Achievable Emission Rate for sulfur dioxide at the Oregon Facility and secure offsetting sulfur dioxide emissions;

4. Require Chemtrade Logistics, Chemtrade Refinery Services, and Marsulex to apply for permits that are in conformity with the requirements of the PSD, the Nonattainment NSR (for the Oregon Facility) and the Title V programs;

5. Order Chemtrade Logistics, Chemtrade Refinery Services, and Marsulex to comply with the NSPS provisions of the Clean Air Act and the NSPS regulations;

6. Order Chemtrade Logistics, Chemtrade Refinery Services, and Marsulex to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above;

7. Assess a civil penalty against Chemtrade Logistics, Chemtrade Refinery Services, and Marsulex of up to $25,000 per day for each violation of the Clean Air Act, its implementing regulations, and the state SIPs prior to January 31, 1997, up to $27,500 per day for each violation between January 30, 1997, and March 14, 2004, and up to $32,500 per day for each violation on and after March 15, 2004.

8. Award Plaintiffs their costs of this action; and,

9. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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Respectfully submitted,

The State of Louisiana
Through the Department of
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